the Court allowed to be rectified. In my view, the amendment sought in that case was an amendment on the same facts to allege negligence in design as well as supervision of the building contract. Such is not the case before me.

The third contention of the plaintiffs – Order 20 Rule 1. On the interpretation of Order 20 Rule 5 the 1975 edition of *Bullen & Leake* and *Jacob's* Precedents of Pleadings has this to say:–

"A marked difference of judicial opinion has developed as to the effect of the new provisions of Ord. 20 r. 5. The prevailing judicial view is that the provisions of this Rule, which permit amendments to be made after the expiry of the current period of limitation only empowered the court to grant such amendments in the three classes of cases specified in paras. (3), (4) and (5) of the rule, and have not imported any general relaxation of the former practice regulating the power to allow such amendments but there is a strong minority judicial view to the contrary. This difference of judicial opinion remains to be resolved by an authoritative decision of the House of Lords, or preferably by legislation." (Pages 133, 134, Note 1)

I am of the view that the prevailing judicial view is the proper one. For these reasons the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Drew & Napier; Godwin & Co.*

RE NG KONG YAU

[O.C.J. (Rajah J.) December 8, 1982]
[Singapore – Originating Motion No. 12 of 1982]

Accountant – Disciplinary action against accountant living and working abroad – Accountant member of Singapore Society of Accountants – Disciplinary action by Society – Jurisdiction – Whether Society has control over professional member practising abroad – Accountants Act (Cap. 212), s. 234(1)(b).

The applicant in this case was a practising public accountant and as such, was subject to the provisions of the Accountants Act (Cap. 212), the By-Laws of the Singapore Society of Accountants Act (Cap. 212) and the By-Laws of the Singapore Society of Accountants (the Society). He commenced practice in Singapore as a public accountant in 1965. In 1977, he concurrently commenced practice in Hong Kong. In 1979 he admitted into the firm two Singapore public accountants, David Chan and Roland Ma.

At the hearing of the Disciplinary Committee held on February 15, 1982, the applicant was charged for sending to the said David Chan and Roland Ma a letter of "Mutual Co-operation" in contravention of the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-Laws 1966, and thereby committing an act discreditable within the meaning of s. 34(1)(b) of the Accountant Act (Cap. 212).

The applicant contended that as he lived and worked in Hong Kong he was not professionally accountable to the Society.

Held, dismissing the application: (1) on the facts of the instant case, the Society has not only statutory but territorial jurisdication over the applicant. Under the Accountants Act, the Society has control over the professional conduct of all its members, whether such conduct be within or outside Singapore. It is a purely domestic matter of the Society deciding who are fit to continue to be members of it and not a complex question of Conflict of Laws;

(2) the Disciplinary Committee was therefore right in ruling that it had jurisdiction to go into the charges against the applicant.

Cases referred to:

(1) *Treacy* v. *Director of Public Prosecutions* [1971] A.C. 537
(2) *Cordova Land Co. Ltd.* v. *Victor Bros. Inc.* [1966] 1 W.L.R. 793
(3) *George Monro Ltd.* v. *American Cyanamid & Chemical Corporation* [1944] K.B. 432

ORIGINATING MOTION.

Harry Elias (*Teddy Lim* with him) for the applicant.

Lee Han Yang (*Lee Han Tiong* with him) for the respondents.

Cur Adv. Vult.

Rajah J.: The Applicant, Ng Kong Yau, in this Originating Motion is a practising public accountant and as such is subject to the provisions, including those of discipline, of the Accountants Act (Cap. 212) (the Act) and of the By-Laws of the Singapore Society of Accountants (the Society) made under section 31 of the Act and known as the Singapore Society of Accountants (Practice and Etiquette of Accountants) By-Laws, 1966. He commenced practice in Singapore as a public accountant in 1965 under the name or style of Ng Kong Yau & Co. (the Firm). In 1977 the Applicant concurrently commenced practice in the Colony of Hong Kong as a certified public accountant under the name or style of Lawrence Wong & Co. In 1979 he admitted into the Firm two other Singapore public accountants namely David Chan Kong Yuen (David Chan) and Roland Ma Koh Eng (Roland Ma).

Sometime prior to the November 21, 1979 the Applicant came to Singapore from Hong Kong and discussed with his partners, David Chan and Roland Ma, certain matters "in connection with the establishment of mutual co-operation between our two Firms". He then left for Hong Kong and from there on the November 21, 1979 wrote a letter (the Letter) on his Hong Kong firm letter head to his Singapore partners and the Firm wherein he set out "in order to have a clearer understanding for your comments and approval" the matters, which had been discussed with them while he was in Singapore. The Letter is hereunder set out *verbatim* as this was what triggered off the disciplinary proceedings by the Society against the Applicant:–

"Dear David and Roland,

MUTUAL CO-OPERATION

As discussed when I was in Singapore in connection with the establishment of mutual co-operation between our two Firms, I set out below the points "in order to have a clearer understanding for your comments and approval:–

1. We shall render services, normally rendered by Certified Public Accountants in Hong Kong, to your clients who wish to establish or who have already established a place of business in Hong Kong and you will render services, normally rendered by Public Accountants in Singapore, to our clients who wish to establish or who have already established a place of business in Singapore.

2. Wherever possible we shall indicate to you and you will indicate to us the fee you or we should charge for the services to be rendered. The party who actually renders the services to the clients will determine the fee and will bill the clients direct but his fee should not be less than the amount indicated by the other party, except those cases where the fee and the terms have been mutually agreed to by both the parties.

3. We shall both assist each other, as far as possible, in order that satisfactory services can be rendered to the clients.

4. A service fee at *20%* of the fee collected from the clients will be payable by the party collecting the fee from the clients to the other.

5. The service fee is to be set off against the amount due to each other and the balance then due is to be paid every six months in July and January each year for the fee due and payable up to the 30th June and 31st December each year.

I shall appreciate if you will kindly let me have your comments and approval as I like to see that the proposed arrangement will be of benefit to all of us."

At the hearing of the Disciplinary Committee held on the February 15, 1982 the Applicant faced charges as follows:–

"You, NG KONG YAU, PAS, are charged that you did on or about November 21, 1979 send or cause to be sent to Messrs David Chan and Roland Ma of Ng Kong Yau & Co., Bank of East Asia Building, 5th Floor, 137-E, 1 Market Street, Singapore 0104 a letter on the subject of 'Mutual Co-operation' in contravention of the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-laws 1966 and you have thereby committed an act discreditable to an accountant within the meaning of Section 34(1)(b) of the Accountants Act (Cap. 212)"

Alternatively,

"You, NG KONG YAU, PAS are charged that you did on or about November 21, 1979 send or cause to be sent to Messrs David Chan and Roland Ma of Ng Kong Yau & Co., Bank of East Asia Building, 5th Floor, 137-E, 1 Market Street, Singapore 0104, a letter on the subject of 'Mutual Co-operation' in contravention of By-law 6(1) of the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-laws 1966 and you have thereby committed an act discreditable to an accountant within the meaning of section 34(1)(b) of the Accountants Act (Cap.212)".

At the disciplinary hearing counsel for the Applicant raised 3 preliminary objections to the charges. Only the first of these 3 objections concerns us in these proceedings. Counsel took the point that as the alleged offences were contained in the Letter which was written in Hong Kong by the Applicant, in his capacity as a Hong Kong certified public accountant, the case was outside the juridiction of the Disciplinary Committee of the Society and asked for a ruling thereon. The Disciplinary Committee responded by ruling that they did have the jurisdiction, whereupon counsel applied for a stay of proceedings to enable the applicant to appeal to the High Court to determine the question whether the case was or was not within the jurisdiction of the Disciplinary Committee. The application was acceded to by the Disciplinary Committee and the hearing of the charges as framed was adjourned pending proceedings before the High Court on this single point.

The Applicant then by his counsel took out this Originating Motion and the matter came before me for determination on this single issue.

Counsel put the case for the Applicant as follows:–

(1) That the alleged professional offence of misconduct was committed in Hong Kong.

(2) That the alleged professional offence was committed by an accountant living and working in Hong Kong.

(3) That as the Applicant was a representative of a Hong Kong firm of certified public accountants and as the offence was committed in Hong Kong it should be his fellow professionals in Hong Kong who could discipline him and not the Society in Singapore.

Counsel for the Applicant, to sustain his case, called to his aid the principles governing jurisdiction of our courts in relation to criminal and tortious acts and breaches of contract and cited the cases of *Treacy* v. *Director of Public Prosecutions*[1] on criminal acts, *Cordova Land Co. Ltd.* v. *Victor Brothers Inc.*[2] and *George Monro, Ltd.* v. *American Cyanamid and Chemical Corporation*[3] on breaches of contract and referred to in *Dicey* on Conflict of Laws (10th Edn.) Vol. 1 at pages 213 & 214 on tortious acts and contended that the forum for discipline in the instant case was Hong Kong and not Singapore.

As against this counsel for the Society urged upon me the view that the Applicant on the facts of this case was clearly within the control of the Society by virtue of the Act, the preamble to which reads, "an Act to constitute the Singapore Society of Accountants and to provide for the registration and control of Accountants". He submitted:–

(1) That the Applicant was at all material times and still is a member of the the Society under the provisions of the Act.

(2) That at the relevant time he was carrying on an accountants practice in partnership in Singapore under the style of Ng Kong Yau & Co.

(3) That the professional offence was hatched in Singapore when the Applicant was in Singapore some time prior to his writing the Letter.

(4) That the Letter evidenced a professional offence to be committed in Singapore.

(5) That although the Letter physically originated in Hong Kong it was sent to Singapore by the Applicant and received by his partners in Singapore where the professional offence was to be committed.

Of the two positions taken by the Applicant and the Society I find that of the Society more acceptable in terms of the Applicant's obligations. duties and conduct under the Act.

It seems to me that the Applicant came to Singapore to persuade his partners into doing something which the Letter sets out and this while he was a registered public accountant in Singapore and carrying on an active accounting practice in Singapore. Briefly, the case for the Applicant is put on the basis that, as he lives and works in Hong Kong, he is not professionally accountable to the Society. He may well have his residence in Hong Kong but does he work exclusively in Hong Kong. Not on the facts of this case. The fact that he is a partner, more so as he is the founder partner of a Singapore accountancy firm. enables him, no doubt, to come in and go out of Singapore as and when he wishes. In these circumstances does he not have a business and work in Singapore. If I accede to the persuasions of counsel for the Applicant could it not be that it could result in two sets of professional standards – one for a Singapore accountant residing and working in Singapore and another for a Singapore accountant who is a partner in a Singapore firm but residing in Hong Kong and where he carries on practice either on his own or in partnership. The arguments advanced on behalf of the Applicant could have been plausible had he ceased to be a member of the Society by virtue of section 29 of the Act. But as it is in this case the Applicant is both a member of the Society as well as a certified public accountant in Hong Kong.

I do not think that the cases cited for the Applicant assist him. In the instant case although the Applicant wrote the Letter in Hong Kong he was at the moment of writing and still is a member of the Society. In my view under section 31 of the Act the Council of the Society has control over the professional conduct of all its members be they practising in Singapore or elsewhere. In any event the Letter, even though written and posted in Hong Kong by the Applicant, reached his partners in Singapore and was to be acted upon in Singapore. Clearly, on the facts of the instant case, the Society has not only statutory but territorial jurisdiction over the Applicant. The short answer to the Applicant is that under the Act the Society has control over the professional conduct of all its members, whether such conduct be within or outside Singapore. It is a purely domestic matter of the Society deciding who are fit to continue to be members of it and not a complex question of Conflict of Laws.

It follows, therefore, that, in my view, the Disciplinary Committee was right in ruling that it

had jurisdiction to go into the charges against the Applicant.

Order accordingly.

Solicitors: *Wong & Lim; Lee, Woo & Partners.*

THE "WILBIE".

INTER-OCEAN TOWING (PTE.) LTD. v. SELCO (SINGAPORE) PTE. LTD.

[O.C.J. (Sinnathuray J.) December 31, 1982]

[Singapore – Civil Suit No. 70 of 1979]

Shipping Law – Towage Contract – Plaintiffs claimed as owners of towage tug – Dispute as to ownership – Purported sale of tug to plaintiffs – Whether title passes – Non-compliance with Merchant Shipping Act (Cap. 172), s. 411(1) & (2).

Shipping Law – Ownership of vessel – Bill of Sale must be recorded at Port of Registry – Merchant Shipping Act (Cap. 172), s. 411(1) & (2).

Pursuant to a "towage agreement" dated January 12, 1973 made between the Owners of "Wilbie" through their agents Sime Darby, and the defendants, the "Wilbie" towed the defendants' barges "Selco L8" and "Selco L9" for $40,000 (which had already been paid for by the defendants). In that journey, a third barge, "Selco L19" belonging to the defendants was also towed by "Wilbie".

The plaintiffs claimed against the defendants $20,000 as towage costs incurred by the plaintiffs when the towage of the third barge was executed by the master of the "Wilbie" on instructions given to him by the defendants' agents in Chittagong. The plaintiffs also claimed $16,500 for demurrage when the "Wilbie" was delayed in Chittagong beyond "the delay time" agreed upon by the parties in the Agreement.

The plaintiffs claimed as owners, and that the said agreement was entered into by Sime Darby for and on behalf of the plaintiffs. The defendants disputed these allegations of facts.

Held, dismissing the plaintiffs' claim: "Wilbie" was not registered in the plaintiffs' name in the Registry of Ships until July 4, 1973. A purchaser of a Singapore registered vessel does not obtain a complete title until the bill of sale has been recorded at the Port of Registry.

CIVIL SUIT.

Lo Kok Siong for the plaintiffs.
K. Parasuram for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: The claim of the plaintiffs, Inter-Ocean Towing (Pte.) Ltd., against the defendants, Selco (Singapore) Pte. Ltd., is in respect of a towage contract.

It is common ground that pursuant to the Agreement for Towage Services ("the Agreement") dated January 12, 1973 made between the Owners of the Tug "Wilbie" through their managing agents, Sime Darby Shipping Limited ("Sime Darby"), and the defendants, the "Wilbie" towed the defendants' barges "Selco L8" and "Selco L9" from Chittagong to Singapore for a lump sum of $40,000 and, that the defendants have paid in full the said sum to the owners of "Wilbie". It is also common ground that in that journey an additional third barge belonging to the defendants, "Selco L19" was also towed by the "Wilbie" from Chittagong to Singapore.

The plaintiffs' case is that the towage of the third barge was executed by the master of the "Wilbie" on instructions given to him by the defendants' agents in Chittagong. Consequently, the plaintiffs claim $20,000 as additional towage costs or alternatively they make a claim for damages on *quantum meruit.*

There is a further claim of the plaintiffs for demurrage in the sum of $16,560 on the ground that "Wilbie" was delayed in Chittagong beyond "the delay time" agreed upon the parties in the Agreement.

The foundation of the plaintiffs' claim set out in the Statement of Claim is that when the Agreement was made, the plaintiffs were the owners of "Wilbie" and, that the Agreement was entered into by Sime Darby for and on behalf of the plaintiffs. The defendants dispute these allegations of facts. They say in their Defence that they have no knowledge that the plaintiffs were the owners of "Wilbie" and, that they also have no knowledge as to whether Sime Darby were acting as agents of the plaintiffs. The burden of proof of these facts is therefore on the plaintiffs.

The only evidence on record that at the material time the plaintiffs were the owners of "Wilbie" is the oral evidence of Mr. Willie Loh Kum Yong, the managing director of the plaintiffs. He said he bought "Wilbie" in June 1972 in his own name with the intention of setting up a limited company to own the vessel. The company, the plaintiffs,